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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,306	03/30/2004	Marvin D. Kubischta	02708.0007.NPUS00	1801

22930 7590 05/15/2008
HOWREY LLP
C/O IP DOCKETING DEPARTMENT
2941 FAIRVIEW PARK DR, SUITE 200
FALLS CHURCH, VA 22042-2924

EXAMINER

CRAIG, DWIN M

ART UNIT	PAPER NUMBER
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2123

MAIL DATE	DELIVERY MODE
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05/15/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/812,306</p>	<p>Applicant(s) KUBISCHTA ET AL.</p>	
	<p>Examiner DWIN M. CRAIG</p>	<p>Art Unit 2123</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 March 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 27 March 2008. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-22.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Paul L Rodriguez/
Supervisory Patent Examiner, Art Unit 2123

Continuation of 11. does NOT place the application in condition for allowance because: Applicants' have presented arguments regarding the rejections as set forth in the Final Office action on 9/27/2007, the Examiner will now present a response to said arguments. On page 8 of the 3/27/2008 response, Applicants' argued that the previously presented arguments fail to explain how the James reference teaches a "continuous clock" as expressly claimed. The Examiner will now provide a more detailed explanation, James clearly teaches a continuous clock, for example see Col. 1 lines 33-40, "Continuous model simulation is a digital algorithmic implementation of a set of differential equations representing a state of a physical system as a function of time." Note the phrase, "function of time" if a simulation is performed, and in this case a Continuous simulation, and this simulation uses a differential equations representing different states of a physical system and that simulation is doing so as a function of time, as almost all simulations do, then there has to be a simulation clock, in order to model the physical system as "a function of time" Further, if the simulation is a continuous simulation, then the simulation clock has to be a continuous simulation clock, therefore James is clearly teaching a continuous simulation clock as expressly claimed. The Examiner is interpreting the term "continuous" as meaning the simulation clock is constantly advancing and not pausing. James further teaches the use of a clock, Col. 5 lines 33-36 more specifically "from either the clock...", therefore when the simulator of James is in continuous mode and receiving a clock as a Timing Element, that clock is functionally a continuous simulation clock, as expressly claimed. Applicants' then argued on page 8 that, "the current Office Action obfuscates matters by creating uncertainty as to what specific modification is proposed to James", the specific modification is that James does not expressly disclose, the well known in the simulation art method of using a real-time clock as the simulation clock. The office action specifically states that James does not expressly disclose a "real-time clock" James does disclose a continuous simulation clock, however the simulation clock of James is not a real-time continuous simulation clock, as disclosed by Bennington. On page 9 of the After Final response, Applicants' further argued that, "To the extent that the Office Action proposes that the Bennington clock should be input to the Jame's non-real time mode as an additional element, such a position is untenable", the Examiner respectfully traverses Applicants' argument, there is no teaching in James that would prevent the use of the real-time simulation clock of Bennington being provided as an input to the simulator of James, therefore the simulator clock of Bennington could be used in the simulator of James, therefore the Examiner's position is tenable. On page 10 Applicants' argued that, "As presented, the Office Action would take the structure of James as shown in one of the drawings, and then somehow connect a real-time clock into that structure as an experiment." The Examiner respectfully traverses Applicants' argument, it would be easy for an artisan of ordinary skill to take the Real-time clock of Bennington, apply the clock signal to a digital input of a computer running the simulator of James, write a software routine to monitor the real-time clock signal and then call the user input to the James simulator and present a clock event, see James Figure 1 item 18, just present the real-time clock signal and to route that clock to the User Input. As regards the motivation as to why an artisan of ordinary skill would combine the teaching of James and Bennington, those responses were clearly set forth in the Final Office Action on pages 2-4. On page 12 of the After Final response Applicants' have presented arguments and example patents as to why Applicants' claims 17-22 are directed towards statutory subject matter, the Examiner will only direct responses and arguments as regards Applicants' instant claims and specification, as regards the cited issued patents, the Examiner has no comment. Applicants' claims 17-22 claim a physical computer readable storage medium, which Applicants' specification clearly teaches could be the internet, claims to communications media, such as the internet, which can be composed of fiber optic cables or copper cables and wires is prohibited, see the MPEP 2106.01 Computer-Related Nonstatutory Subject Matter, more specifically only when the claimed computer readable medium is used in a computer, and not a network of computers, just a single computer itself, does the claimed subject matter become statutory. When the storage medium is the internet or a computer network the claimed subject matter could be interpreted to be in the form of a carrier signal or a modulated light pulse, that neither alters or modifies a computer storage medium, such as a memory. In the case of a carrier or a modulated light pulse, no statutory machine is being configured by the software code and therefore the software is directed to non-statutory subject matter. For the reasons presented here and in the Final Office Action of 9/27/2007 the previously applied rejections will be maintained. As regards the request for an interview, the Examiner notes that no request was presented during the prosecution of the case, however if Applicants' would be willing to present new amendments to the instant claims or a new argument as to the patentability of the claims the Examiner will grant an After-Final interview.